



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

Deputy Minister

Sous-ministre

**SECRET**

**PROTECTED SOLICITOR-CLIENT PRIVILEGE**

2019-009-00182

**MEMORANDUM FOR THE MINISTER**

**STRATEGY FOR ADVANCING RECONCILIATION WITH THE FIVE NATIONS  
(FOR INFORMATION)**

s.69(1)(g) re: (c)

**SUMMARY**

The purpose of this note is to provide information on the strategy for re-initiating negotiations, [REDACTED] for a Recognition of Indigenous Rights and Self-Determination (RIRSD) fisheries agreement with the five Nuu-chah-nulth First Nations involved in the Supreme Court of British Columbia (BCSC) *Ahousaht* litigation (the "Five Nations").

s.69(1)(g) re: (a)

s.69(1)(g) re: (c)

The [REDACTED] Fisheries Reconciliation Agreement (FRA) with the Five Nations. The primary elements of the mandate, which were funded in Budget 2019, include funding for lost economic opportunities, fisheries allocations for both food, social and ceremonial (FSC) and commercial purposes, and collaborative fisheries management.

This note outlines a strategy, with associated timelines, for moving forward with negotiating a FRA with the Five Nations. The initial element of this strategy includes an informal discussion in advance of the planned main table, in order to assess the potential for a successful meeting with the Five Nations' representatives.

The main table meeting with the Five Nations is scheduled for May 9, 2019.

**BACKGROUND**

The 2009 BCSC *Ahousaht* decision established that five (*Ahousaht*, *Ehattesaht*, *Hesquiaht*, *Mowachaht/Muchalaht*, *Tla-o-qui-aht*) Nuu-chah-nulth Nations, located on the west coast of Vancouver Island (WCVI), each have a constitutionally protected Aboriginal right to fish and to sell fish within their court-defined fishing territory. The Department of Fisheries and Oceans (DFO) has been negotiating with the Five Nations since that decision in an effort to accommodate the right. A second decision on April 19, 2018 provided clarification regarding the right, and required that DFO provide the Five Nations with a multi-species Fisheries Management Plan (FMP) with allocations for salmon, groundfish, crab, and prawn to exercise their Aboriginal rights in their court-defined fishing territories. On March 31, 2019, DFO

s.21(1)(b)  
s.21(1)(c)

provided the Five Nations with the final 2019-20 FMP. However, given the concerns the Five Nations have raised with the initial FMP allocations, fishery management elements, and their ongoing appeal of the April 2018 BCSC decision [REDACTED]

s.69(1)(g) re: (a)  
s.69(1)(g) re: (c)

Since March 2017, representatives of the Five Nations have worked with a joint Crown-Indigenous Relations Canada (CIRC)-DFO negotiating team and a facilitator under the RIRSD process. [REDACTED]

s.69(1)(g) re: (a)  
s.69(1)(g) re: (c)

permitting the parties to move forward with these negotiations.

**STRATEGIC CONSIDERATIONS**

s.21(1)(b)  
s.21(1)(c)

Negotiations will likely [REDACTED]

s.69(1)(g) re: (c)

Building from the steps outlined in the 2017 Framework Agreement, and in order to manage the above considerations, we are taking the following next steps in the negotiation process:

1. An informal discussion with a few key representatives of the Five Nations to assess the potential for successful negotiations took place on April 26, 2019. This meeting was brief and logistics focused, preparing for more formal table discussions to occur in the coming weeks, get a sense of the expectations and concerns of the Five Nations, and outlining that [REDACTED]

amongst others:

s.69(1)(g) re: (c)

s.21(1)(b)

s.21(1)(c)

a.

b.

c.

d.

2. A formal leads table meeting, including DFO and CIRC, with the Five Nations on May 9, 2019 to discuss, in further detail, the above four listed components and any other key elements of the mandate, taking into account matters raised during the informal discussion.
3. Development of a Negotiator's Understanding, stating that the parties agree to proceed in good faith to negotiate a FRA, to be finalized by no later than June 30, 2019. The Negotiator's Understanding would specify topics, including the four complimentary elements above, for future negotiations.
4. Signing ceremony on or before June 30, 2019 where Parties sign the Negotiator's Understanding.
5. Negotiation of a FRA consistent with the Negotiator's Understanding to be initiated immediately following the signing ceremony.

#### **INTERDEPARTMENTAL CONSULTATIONS**

s.23

#### **INDIGENOUS CONSULTATIONS**

The Five Nations have already contacted CIRC regarding potential dates to meet to discuss the RIRSD mandate and the parties have agreed to a leads meeting on May 9, 2019.

#### **EXTERNAL CONSULTATIONS**

Non-Indigenous resource users want to be involved and kept informed of negotiations, but given the confidential nature of the negotiations, the parties would need to discuss such an arrangement. At the request of the Five Nations, the initial FMP was presented to the various WCVI roundtable processes. The Department would be interested in seeing this arrangement continue.

.../4

- 4 -

SECRET

**NEXT STEPS**

Pacific region will be implementing the above strategy. Departmental officials are available to brief you at your convenience.

*Tim Sargent*

Timothy Sargent  
Deputy Minister

APR 30 2019

Kevin Stringer  
Associate Deputy Minister